

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte ANDREW JAY SKOOG, JANE ANN MURPHY  
and TIMOTHY RAY LATTIRE

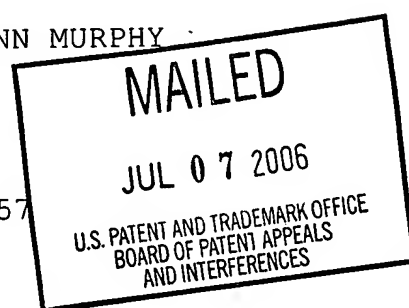
---

Appeal No. 2006-1961  
Application No. 10/726,357

---

ON BRIEF

---



Before KIMLIN, WALTZ and FRANKLIN, Administrative Patent Judges.  
KIMLIN, Administrative Patent Judge.

REMAND TO THE EXAMINER

This is an appeal from the final rejection of claims 1-22.

Under the heading GROUNDS OF REJECTION in the examiner's answer, the examiner lists three rejections based on Skoog et al. U.S. Patent No. 6,720,034. In particular, claims 1-5 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 2, 4-6 and 7 of U.S. Patent No. 6,720,034. Claims 1-9 and 16-18 stand rejected under the judicially created doctrine of obviousness-type double patenting

Appeal No. 2006-1961  
Application No. 10/726,357

as being unpatentable over claims 1-16 of U.S. Patent No. 6,720,034 in view of Rigney. In addition, claims 14 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagaraj in view of Klabunde, Kirk-Othmer, Rigney and Skoog et al.

The examiner also states at page 3 of the answer that "[t]he examiner has withdrawn the provisional obvious double patenting rejection to claims 1-5 in view of the terminal disclaimer filed 6/9/2005" (first paragraph).

Accordingly, it can be seen that the examiner's answer contains inconsistencies with respect to the rejections based on U.S. Patent No. 6,720,034. Manifestly, if appellants have filed an effective terminal disclaimer regarding U.S. Patent 6,720,034, the examiner's double patenting and Section 103 rejections based on the patent are inappropriate.

Consequently, this application is remanded to the examiner to resolve the inconsistencies noted above with respect to the rejections over U.S. Patent No. 6,720,034, and the effectiveness of appellants' terminal disclaimer in removing the patent as a basis for rejection.

Appeal No. 2006-1961  
Application No. 10/726,357

This remand to the examiner pursuant to 37 CFR § 41.50(a)(1) is made for further consideration of a rejection. Accordingly, 37 CFR § 41.50(a)(2) applies if a supplemental examiner's answer is written in response to this remand by the Board.

REMANDED

*Edward C. Kimlin*  
EDWARD C. KIMLIN  
Administrative Patent Judge

THOMAS A. WALTZ  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

Beverly A. Franklin  
BEVERLY A. FRANKLIN  
Administrative Patent Judge

ECK/hh

• . . .  
Appeal No. 2006-1961  
Application No. 10/726,357

MCNEES WALLACE & NURICK, LLC  
100 PINE STREET  
P.O. BOX 1166  
HARRISBURG, PA 17108-1166